

**RULES
OF
TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
OFFICE OF THE COMMISSIONER**

**CHAPTER 0940-1-7
CONFLICT RESOLUTION**

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0940-1-7-.01 PURPOSE.

- (1) The purpose of this chapter is to provide a process for clear, orderly and expeditious conflict resolution between service recipients and licensees.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, and 33-2-601 et seq.
Administrative History: Original rule filed January 31, 2006; effective April 16, 2006.

0940-1-7-.02 SCOPE.

- (1) This chapter applies to all licensees of the Department for resolution of conflict(s) between a service recipient and a service provider.
- (a) Conflicts include, but are not limited to:
1. Health and safety concerns;
 2. Accessibility of service location;
 3. Provision or termination of services and supports except when a service or support is terminated because a third party payer refuses to continue to fund the service or support; and
 4. When the parent, legal guardian, legal custodian, legal caregiver of a child, 16 years of age or older with serious emotional disturbance or mental illness, believes that the child's decision to terminate treatment will have severe, adverse effects on the child.
- (b) This conflict resolution process does not apply to:
1. Grievances related to the family support program under T.C.A. §33-5-209;
 2. Location of service or support unless the location is inaccessible to the service recipient and/or service recipient's family, as appropriate;
 3. Request for discharge from a voluntary admission under T.C.A. §33-6-201 et seq.;
 4. Decisions of an inpatient mental health facility's treatment review committee under T.C.A. §33-6-107;
 5. Decisions of a developmental disability service provider's behavior support committee and/or human rights committee;

(Rule 0940-1-7-.02, continued)

6. Commitment for involuntary treatment and/or mandatory outpatient treatment;
7. Administration of electroconvulsive therapy or other convulsive therapy to a child;
8. Rights under federal or other state laws, rules or court decisions; and
9. Termination of service or support because a third party payer refuses to continue to fund the service or support.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-601 et seq., 33-6-206, and 33-8-202. **Administrative History:** Original rule filed January 31, 2006; effective April 16, 2006.

0940-1-7-.03 DEFINITION.

- (1) Legal representative means:
 - (a) The parent;
 - (b) The legal custodian;
 - (c) The legal caregiver under T.C.A. §34-6-301 et seq. who is acting on behalf of a child;
 - (d) The legal guardian of a service recipient who is an unemancipated child;
 - (e) The conservator or attorney-in-fact under a durable power of attorney for health care of an adult service recipient; or
 - (f) A surrogate decision maker under T.C.A. §§33-3-219 and 33-3-220, if the conflict is related to routine medical, dental or mental health treatment.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-601 et seq., 33-6-206, 33-8-202, and 34-6-301 et seq. **Administrative History:** Original rule filed January 31, 2006; effective April 16, 2006.

0940-1-7-.04 DUTIES OF LICENSEES.

- (1) Every licensee of the department must develop and implement clear conflict resolution procedures that comply with this chapter. Such procedures must include informal meetings and an appeal process and must ensure that each conflict is resolved within the time frame in 0940-1-7-.06.
- (2) The licensee must inform each service recipient and his/her legal representative of these procedures upon admission or when a legal representative is appointed.
- (3) Licensees must allow each service recipient or his/her legal representative to seek resolution of conflicts without intimidation, interference or retaliation.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, and 33-2-601 et seq. **Administrative History:** Original rule filed January 31, 2006; effective April 16, 2006.

0940-1-7-.05 RIGHTS OF SERVICE RECIPIENTS.

- (1) A service recipient who has capacity or the legal representative if the service recipient lacks capacity, may request conflict resolution procedures if he/she has been unable to resolve a conflict.

(Rule 0940-1-7-.05, continued)

- (2) While conflict resolution is pending, provision of services or supports must not cease over the objection of a service recipient with a developmental disability or his/her legal representative.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, and 33-2-601 et seq.
Administrative History: Original rule filed January 31, 2006; effective April 16, 2006.

0940-1-7-.06 PROCEDURES.

- (1) Conflict resolution must not exceed two (2) steps to finality: an informal meeting under 0940-1-7-.06(10) and an appeal under 0940-1-7-.06(11).
- (2) A request for conflict resolution must be submitted to the licensee not more than thirty (30) calendar days after the occurrence of the matter which is the basis for the request.
- (3) Requests for conflict resolution must contain:
 - (a) The basis for the request;
 - (b) The corrective action desired by the service recipient or his/her legal representative; and
 - (c) Sufficient facts or other information to begin the process.
- (4) A request may be submitted orally or in writing to the chief officer of the licensee or designee of the chief officer. If the request is given orally, it must be documented in the service recipient's record. A written request must be filed in the service recipient's record. No request may be denied because a specific form adopted by a licensee has not been used.
- (5) Conflict resolution proceedings may occur during business hours or at other mutually agreeable times.
- (6) Conflict resolution proceedings may be held at the licensee's location or at a mutually agreed upon place convenient to all parties.
- (7) Any proceeding under this chapter may be conducted by telephone conference call, computer-aided meeting processes or other electronic means in which all parties can participate.
- (8) A service recipient or his/her legal representative may represent himself/herself in the procedure or may designate another person to speak on his/her behalf.
- (9) If a service recipient or his/her legal representative intends to retain legal counsel, the service recipient or his/her legal representative must notify the licensee of the intent. If the service recipient or his/her legal representative retains legal counsel, the licensee may also have legal counsel present during the proceeding.
- (10) The first step in the conflict resolution procedure must be an informal meeting of involved persons:
 - (a) The informal meeting must be held no more than five (5) business days after the request.
 - (b) The meeting must include an informal discussion of issues raised.
 - (c) The outcome of the informal meeting must be documented in the service recipient's record with a copy of the outcome sent to all parties within two (2) business days after the meeting.

(Rule 0940-1-7-.06, continued)

- (11) If the issue is not resolved during the informal meeting, the service recipient or his/her legal representative may request an appeal within five (5) business days of receipt of the documented outcome of the informal meeting.
- (12) The chief officer or his/her designee must hear the appeal within ten (10) business days of the request.
 - (a) If the issue that is the basis for the request for conflict resolution directly involves the chief officer, a designee must be appointed.
 - (b) The appeal must include an informal discussion of the request for conflict resolution, the facts, and the recommendations of the involved parties and other individuals as determined by the chief officer or designee. The rules of civil procedure, evidence and administrative procedures do not apply to the appeal.
 - (c) The chief officer or designee must provide the parties a written statement of the resolution of the appeal within two (2) business days after the conclusion of the hearing. A copy of the written statement must be placed in the service recipient's record.
 - (d) The decision of the chief officer or designee is final and may not be appealed.
- (13) By mutual consent of the service recipient or his/her legal representative and the chief officer or his/her designee, the time limits in this rule may be extended.
- (14) The chief officer of the licensee must retain, in a separate file, a copy of any request for use of conflict resolution, the outcome, and any supporting documentation.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-6-201 *et seq.*, and 34-6-301 *et seq.* **Administrative History:** Original rule filed January 31, 2006; effective April 16, 2006.